still due by way of penalty, the Comptroller of Income Tax acting under section 61B(2) of the Ordinance issued a notice, dated 8th October, 1964, and served it on the taxpayer by registered post some days later. That notice was headed: "INLAND REVENUE DEPARTMENT — NOTICE UNDER SECTION 61B(2) OF THE INCOME TAX ORDINANCE". It went on: "NOTICE is hereby given under section 61B(2) of the Income Tax Ordinance.... to furnish within thirty (30) days from the date of service of this notice, the following particulars:—". The particulars asked for are a signed statement of all the assets and liabilities of the taxpayer as at 31st December, 1963. The nature of this is particularised in some detail but it is unnecessary to set it out here.

The taxpayer, taking the view (no doubt perfectly *bona fide*) that this action on the part of the Comptroller was not justified, did not comply with the notice and in due course was prosecuted for his failure to comply with it under section 90(2) of the Ordinance, which is a general penalty section providing for penalties of fine not exceeding $1,000 or in default six months imprisonment.

The magistrate dismissed the summons without calling on the taxpayer to make his defence on the ground that the notice had not sufficiently stated the purposes for which the information was required. He has stated his views in a judgment which shows most praiseworthy care in consideration and clarity of expression.

Against that decision the Inland Revenue Department appealed and in the event Suffian J. took the view that the demand contained in the notice was one which the Comptroller had power to issue under section 61B(2) and with which the taxpayer was therefore bound to comply. He accordingly set aside the order of acquittal and discharge and remitted the case to the magistrate's court for the magistrate to call upon the respondent to make his defence. He was of the opinion, however, that his view involved a point of law of some importance and reserved accordingly that point for the consideration of this court.

In our view the case is very clear. There is no need to embark on an elaborate discussion of the law relating to income tax but it is to be observed that assessment of income tax for a particular year does not exhaust the taxpayer's potential liability to tax. In a sense, of course, the assessment is final because if the taxpayer does not object to it successfully it stands and the taxpayer is liable in accordance with it and so far as relates to the income in respect of which it is made it is final. But it is not final in the sense of exhausting the taxpayer's tax liability for any particular year by reason of the statutory power which the Inland Revenue Department possesses of raising additional assessments upon the taxpayer. From that it clearly follows that for the purpose of considering whether it is necessary to raise an additional assessment the Inland Revenue are entitled to exercise all the powers of investigation which the tax law gives them. And in particular they are entitled to exercise the powers given to them by the section with which we are concerned here, that is section 61B(2).

That, however, does not conclude the matter because it has been said, and this was certainly what the magistrate had in mind, although it does not appear to have carried much weight with the judge, that any notice under section 61B(2) must set out with greater particularity than was done in the present case the purposes for which information is required.

The section itself says that information may be demanded "for the purposes of this Ordinance" and in our view that requirement was complied with by the notice as it stood. In the first place, it is headed: "INCOME TAX ORDINANCE. SECTION 61B(2)". Then it reads: "NOTICE is hereby given under section 61B(2) ....to furnish....the following particulars." That, to our mind, is tantamount to saying: "You are required to furnish these particulars under the provisions of that section, that is to say you are required to furnish them for the purposes of the Income Tax Ordinance". And there is nothing to contradict that in the detailed statement of the particulars required because they are all questions that in one way or another can affect the taxpayer's liability the settling of which is one of the purposes of the Ordinance.

In the circumstances, then, we are bound to say that in our view the notice as framed was a good notice under section 61B(2) and there was before the magistrate a *prima facie* case that such a notice has been served on the taxpayer and that it had not been complied with.

We are, therefore, compelled to make the same order as the judge made, that is to remit the matter for the magistrate to hear the defence, if any, and to deal with the matter according to law.

Order accordingly.

RE TAN CHWEE BOON, DECD.; YAP SUAT TEE & ORS. v. CHERIE SEE CHENG CHOO

[F.C. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah F.J. and Chua J.) February 10, 1966]

[Singapore — Federal Court Civil Appeal No. Y 3 of 1965]

Probate and Administration Ordinance, (Cap. 17) ss. 18, 19, 21 and 22 — Application by widow and children

of the deceased for letters of administration — Whether application can be refused and a trust corporation appointed — What are special circumstances.

Administration — Letters of — Grant of — Special circumstances.

The appellants, the first widow and children of the deceased, had applied for letters of administration to the estate of the deceased. The learned trial judge refused the application and instead appointed a trust corporation, the nominee of the second widow, as administrators, as he felt that this was the best course for the due and proper administration of the estate which was quite substantial.

Held: (1) where the widow and children of an intestate have applied for a grant of letters of administration and no special circumstances exist they were entitled to a grant of administration;

(2) in this case the fact that the deceased's estate was a substantial one and that the children of the second widow were minors did not constitute such special circumstances as would enable the court to pass over the widow and the children.

FEDERAL COURT.

Eric Choa for the appellants.

C. F. J. Ess for the respondent.

Cur. Adv. Vult.

Chua J.: The question for the decision of this court is whether Buttrose J. was right in law in refusing the appellants' petition for a grant of letters of administration to the estate of Tan Chwee Boon, deceased, and in appointing a trust corporation, a nominee of the respondent, as administrator of the said estate.

The first appellant is the first widow of the deceased and the second and third appellants are children of the deceased by the first appellant. The respondent is the second widow of the deceased.

The respondent opposed the petition of the appellants and in her affidavit filed in this matter she said that it was desirable that this estate be administered by a trust corporation as the estate was a large one and her children were all infants.

The power of the High Court in making grants of letters of administration on intestacy and in deciding to whom they should be granted is conferred by section 18 of the Probate & Administration Ordinance (Cap. 17) which provides as follows:

"18 — (1) When a person has died intestate, the court may grant letters of administration of his estate.

(2) In granting such letters of administration the court shall have regard to the rights of all persons interested in the estate of the deceased person or the proceeds of sale thereof, and in regard to land settled previously to the death of the deceased, letters of administration may be granted to the trustees of the settlement, and any such grant of letters of administration may be limited in any way the court thinks fit.

(3) Without prejudice to the generality of the provisions of subsection (2) —

(a) letters of administration may be granted to the husband or widow or next of kin or any of them;

(b) when such persons apply for letters of administration, it shall be in the discretion of the court to grant them to any one or more or such persons;

(c) when no such person applies, letters of administration may be granted to a creditor of the deceased;

(d) in any case where —

(i) the next of kin of any person dying intestate, or the greater number of such next of kin, so desire; or

(ii) no next of kin or creditor or other person appears, and makes out a claim to letters of administration,

letters of administration of the estate and effects of such intestate may be graned by the court to such person as the court thinks fit for the purpose.

(4) Nothing in this section shall affect any law by which special provision is made regarding the estates of persons of a particular religion or race."

It would appear having regard to section 18(3)(a), and sections 19, 21 and 22 of the Probate and Administration Ordinance that the husband or widow or next of kin or any of them are entitled to letters of administration. The law requires as a general rule that a grant should be made to any of them but it is clear from the provisions of section 18 that the court has a discretion to appoint as administrator some person other than the person entitled to the grant of administration in special circumstances. Some of these special circumstances are set out in section 18(3)(c) and (d) and sections 21 and 22. There may be other special circumstances such as the senility of the person entitled to grant of administration. No broad rule of law can be laid down as to what are special circumstances; each case must be decided upon its own merits. But where the widow and children of an intestate have applied for a grant of letters of administration and no special circumstances exist they are entitled to a grant of administration.

The learned judge in this case said in his judgment that "the question to be decided is what is best for the due and proper administration of this quite substantial estate" and added that "the circumstances of this case both require and demand the appointment of an independent and fully competent and experienced administrator. Tan Kay Thye is not, in my judgment, such a person." With all due respect to the learned judge, I am of the opinion that the learned judge has applied the wrong principle. The proper principle to apply is whether on the materials before the court there are such special circumstances that the court should in the exercise of its discretion pass over a person or persons entitled to letters of administration. In this case the fact that the deceased's estate is a substantial one and the children of the second

widow are minors do not in my view constitute such special circumstances as would enable the court to pass the appellants over.

I would allow the appeal and set aside the grant of letters of administration to the trust corporation. The respondent has through her counsel indicated that she desires to be joined as administrator in the event of this court setting aside the grant to her nominee and having regard to the rights of all persons interested in the estate I would grant letters of administration to the petitioners and to the respondent.

Wee Chong Jin C.J. (Singapore): I agree.

Tan Ah Tah F.J.: I agree.

Appeal allowed.

Solicitors: *Oehlers & Choa; R. C. H. Lim & Co.*

COMPTROLLER OF INCOME TAX v. B. & C. CO. LTD.

[O.C.J. (Gill J.) February 11, 1966]

[K.L. — Civil Suit No. 630 of 1964]

Income Tax Ordinance, 1947, s. 40 — Tax on dividends — Liability of company to pay.

The defendants in this case had in 1958 declared a dividend of $250,000 from which they were entitled to deduct shareholders tax at the rate of 30%. In fact they paid for the year of assessment, 1958, only a portion of this tax, leaving a balance of $74,825 which sum the plaintiff claimed from them. The defendants pleaded that they had paid the tax assessed on them for the year 1959 which was based on the whole of their profits for 1958 including a sum of $357,142 out of which the nett dividend of $250,000 was declared by them in 1958. They contended that as they had paid the income tax for the year 1959 on the whole of their profits for 1959 including that part of the profits as gross dividends out of which the nett dividend was declared, the debt of $74,825 payable had in fact been fully discharged.

Held: under section 40 of the Income Tax Ordinance the defendants were required to deduct tax from the shareholder's dividend and to pay the tax to the Comptroller of Income Tax and they were not entitled to retain the sums so to be deducted or any part thereof and carry it over against their future indebtedness in respect of income tax.

Cases referred to:—

(1) *Government of the Federation of Malaya* v. *A. Omnibus Co. Ltd.* [1963] M.L.J. 14, 16, P.C.

(2) *A. Omnibus Co. Ltd.* v. *Government of the Federation of Malaya* [1961] M.L.J. 92, 94, C.A.

CIVIL SUIT.

Wan Hamzah bin Wan Salleh (Federal Counsel) for the plaintiff.

Ng Ek Teong (*R. Padmanabhan* with him) for the defendants.

Gill J.: The plaintiff's claim in this suit is for a sum of $74,825 which is alleged to be a debt due to the Government by the defendants by virtue of section 40(4) of the Income Tax Ordinance, 1947 (hereinafter called "the Ordinance").

There is no dispute about the facts of the case all of which are set out in the pleadings. The only evidence adduced at the trial was that of the secretary of the defendant company who testified as to the chargeable incomes of his company for the years of assessment 1957, 1958 and 1959 and the amounts of income tax paid thereon for the respective years.

The claim, as set out in the amended statement of claim, is made up as follows. On 10th October, 1958 the defendants declared a dividend of $250,000. Under section 40(1) of the Ordinance they were entitled to deduct from the dividend of $250,000 paid to their shareholders tax at the rate of 30% of every dollar of such dividend (the rate has since been increased to 40%). Under section 40(6) of the Ordinance a sum of $107,142 was deemed to have been deducted by them as tax in respect of the aforesaid dividend. The amount of income tax payable by them in respect of the year of assessment 1958 was $31,614 and the amount carried forward from the year of assessment 1957 in accordance with section 40(5) was $703, making an aggregate of $32,317. After deducting this aggregate sum of $32,317 from the tax deduction of $107,142, the balance of $74,825 became due and payable by them under section 40(4) of the Ordinance which they have failed and neglected to pay.

The defendants in their amended statement of defence do not question the propriety or the correctness of the claim. They aver that no demand for payment of the said sum of $74,825 was made until 20th March, 1960, by which date the plaintiff had assessed the income tax payable by them for the year of assessment 1959. This income tax for the year 1959 was based on the whole of their profits for the year 1958 amounting to $426,738 which included the sum of $357,142 out of which the net dividend of $250,000 was declared on 10th October, 1958. The amount of such income tax was $117,695.20 and it was in fact paid. They therefore contend that income tax having been paid for the year of assessment 1959 on the whole of their profits for 1958 including that part of the profits as gross dividend out of which the net dividend was declared, the debt of $74,825 payable under section 40(4) of the Ordinance has in fact been fully discharged.

What the defendants are saying is that, although it is true that they became liable to pay a debt of $74,825 under section 40(4) of the Ordinance as on 31st December, 1958, this debt was wiped off by their paying, before a demand for its payment was made on 20th March, 1960, a considerably larger sum by way of income tax